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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ninth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 22 November 1993, at 10.30 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.45 a.m.

OPENING OF THE SESSION

1. The CHAIRPERSON declared open the ninth session of the Committee on Economic, Social and Cultural Rights.

2. He welcomed Mr. Ceausu, a newly elected member of the Committee, who had been unable to attend the eighth session, and invited him to make the solemn declaration provided for in rule 13 of the Committee's rules of procedures.

3. Mr. CEAUSU solemnly undertook to discharge his duties as a member of the Committee on Economic, Social and Cultural Rights impartially and conscientiously.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (E/C.12/1993/11)

4. The provisional agenda (E/C.12/1993/11) was adopted.

ORGANIZATION OF WORK (agenda item 2) (E/C.12/1993/L.2)

5. The CHAIRPERSON said that Uruguay had requested postponement of the consideration of its report. A representative of Uruguay was present and had asked to address the Committee.

6. At the invitation of the Chairperson, Mr. Chabem (Uruguay) took a place at the Committee table.

7. Mr. CHABEM (Uruguay), speaking on behalf of the Government of Uruguay, said that a number of imponderable elements involving several ministries and other services in his country had made it necessary to request the deferment of the consideration of Uruguay's report until the next session of the Committee. Drawing attention to his country's unbroken record of 13 years' democratic progress and observance of legal commitments, he appealed to the Committee to grant the extra time needed for the preparation of a full report.

8. Mr. SIMMA suggested that the Committee should proceed along the lines agreed at the previous session in respect of a number of countries, including Uruguay.

9. The CHAIRPERSON said that, to his recollection, that decision allowed for deferment of consideration in exceptional cases.

10. If he heard no objection, he would take it that the Committee accepted the request for deferment made by Uruguay.

11. It was so decided.

12. The CHAIRPERSON stressed the importance of countries' honouring their reporting obligations and expressed appreciation of the Uruguay representative's coming before the Committee to explain his country's position.

13. Mr. Chabem (Uruguay) withdrew.

14. The CHAIRPERSON said that, before inviting the Committee to consider the organizational arrangements for the session, he wished to draw attention to some general developments of relevance to the Committee's work. The first matter of that nature was the response of the Economic and Social Council to the Committee's latest report (E/1993/L.23 and Add.1). Members had already been informed that the Council had approved the recommendation as to their honoraria in principle and had referred it to the Fifth Committee of the General Assembly. While lobbying would, of course, be entirely inappropriate, it might perhaps be advisable for members of the Committee to bring the matter to the attention of their countries' delegations on the Fifth Committee with a view to action being taken at the General Assembly session currently in progress.

15. The Council had also approved the Committee's recommendations with regard to Panama and the Dominican Republic, without, however, making any specific comments. The Committee might wish at some point during the session to consider what measures should be taken within the context of system-wide developments and in the light of the experience of other treaty bodies.

16. Members of the Committee would wish to know that, in view of the budgetary crisis which had engulfed the United Nations as a whole during the preceding months, he had taken the initiative of writing to Mr. Fall, Under-Secretary-General for Human Rights, emphasizing the difficulties that would arise if the Committee were obliged to hold meetings without interpretation or summary records. The absence of summary records, in particular, would greatly reduce the value of the dialogue with States parties, and the Committee would consider such a development most unfortunate. He had sent a copy of the letter to the Human Rights Committee, which, as he understood, had since addressed a similar communication to the Secretary-General. He was pleased to note that both interpretation and summary records were to be provided at the present session, and regretted that the Human Rights Committee had fared less well.

17. Turning to the results of the World Conference on Human Rights, he said that, from the point of view of the Committee, the only genuinely good news was the fact that the World Conference encouraged the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights (document A/CONF.157/23, Section II, para. 75). He remarked, however, that the use of the word "protocols" in the plural was by no means clear. It was significant that the United States representative at the World Conference, while indicating that his country would move towards ratification of the International Covenant on Economic, Cultural and Social Rights, had otherwise made no mention whatsoever of economic or social and cultural rights, using terms such as "human development", "human advancement" or "human resources", etc., in an apparent desire to back away from the human rights implications of those issues. At a time when economic, social and cultural rights were coming increasingly under assault in all parts of the world, the Vienna Declaration, with its few vague references to those rights, had to be regarded as highly unsatisfactory. Economic, social and cultural rights continued to be neglected within the

United Nations as a whole and in the Centre for Human Rights in particular. The Committee would no doubt wish to consider expressing itself more forcefully on that issue.

18. It should also be noted that in the passage devoted to extreme poverty and social exclusion (A/CONF.157/23, section I, para. 25), the Vienna Declaration spoke of a "violation of human dignity" rather than one of human rights. Without questioning the motives of the Vienna Declaration's authors, he could not help feeling that their choice of words reflected the desire to express concern in a framework other than that of the International Covenant on Economic, Social and Political Rights. The matter was serious, and comments and suggestions by Committee members would be welcome.

19. With regard to developments in the advancement of economic and social rights elsewhere in the United Nations system, it seemed to him that the greatest efforts were those being made in UNDP, UNICEF and ILO. The Centre for Human Rights seemed to be doing little. The Commission on Human Rights had renewed the mandate of the Working Group of Governmental Experts on the Right to Development, which had met the previous week and adopted some very general conclusions, without, however, taking any steps to develop the framework of economic, social and cultural rights. He thought it was up to the Committee, therefore, to promote interaction with other organizations of the United Nations system, rather than awaiting approaches from them, and to develop a strategy for coordination, especially with regard to the forthcoming World Summit for Social Development. Such an effort should form a major part of the current session's tasks.

20. The nature of the Committee's relations with the specialized agencies should likewise be examined. He had noted, when preparing a report requested by the General Assembly on treaty bodies in general, a major problem in that regard: most of the agencies devoted little attention to system-wide efforts to promote human rights, and there had been very little response to the numerous Commission resolutions calling on the specialized agencies to collaborate in tackling problems relating to HIV/AIDS, minorities, child labour, structural adjustment and many other issues. The agencies did, indeed, receive a vast number of undifferentiated requests in that regard, but seemingly treated them as too numerous to deal with, whereas they could at least request some priority guidelines from the Committee. The latter, too, in asking the World Bank and IMF to collaborate with it, had failed to propose any specific framework in order to make such collaboration as effective as possible.

21. A suitable system for collaboration was clearly lacking. With regard to NGOs, one solution might be to devote a three-hour meeting at each session, for them to attend either informally or with records. At any rate, some procedure would have to be established if the Committee was to make progress in developing respect for economic, social and cultural rights.

22. The matters to be considered at the current session included a letter, shortly to be circulated to the members of the Committee, from a North American group drawing attention to the likely negative impact on labour agreements of the North American Free Trade Association. He felt it important

that the Committee should pronounce on the need to maintain respect for such agreements in the context of the current moves towards free trade throughout the world - a matter on which ILO seemed to be taking little action.

23. The Committee must also take up the proposals, agreed upon at the previous session, aimed at redesigning its report. Other tasks included considering the question of a new approach to its reporting guidelines relating to second and subsequent reports from States parties, and a resumption of questions relating to the rights of the elderly and ageing - a topic on which no specific conclusion had been reached at the previous session. It had also to examine developments in other committees. In that connection, it was interesting to note that the Committee on the Rights of the Child was insisting on detailed examination of States parties' reports, and was endeavouring to expand its total meeting times to nine weeks, in addition to three weeks of working group meetings, in line with the schedule of the Human Rights Committee; it had also embraced the procedure of adopting detailed concluding observations, as well as intermediate or preliminary observations, with a view to obtaining further information from States parties when required.

24. In that regard, the Committee had to decide on a procedure to adopt in the case of late reporting by States parties, with a view to determining the subsequent reporting interval in such cases - a matter on which a number of States parties were awaiting clarification.

25. He also drew attention to the general discussion scheduled for 6 December, which he hoped would be an occasion for specific contributions from the members of the Committee as well as from the representatives of the specialized agencies that had signified their wish to participate orally.

26. Lastly, he drew attention to the NGO hearings scheduled for the Committee's next meeting, and announced that a letter from the Government of Canada, received in response to the Committee's concluding observations issued at its previous session, would shortly be circulated.

27. Mr. SIMMA noted that the draft programme of work for the current session (E/C.12/1993/L.2) contained no provision for a day for the preparation of the report, contrary to the programmes of previous sessions. He wondered whether the omission implied some change in the Committee's working procedures.

28. With regard to the Chairperson's remarks on the conclusions of the World Conference on Human Rights, he asked whether the reference to the Commission on Human Rights working in cooperation with the Committee on Economic, Social and Cultural Rights on the implementation of the optional protocols meant that the latter were to be deemed more within the purview of the Commission itself rather than the Committee.

29. Lastly, he did not agree that economic, social and cultural rights were inadequately covered in the concluding observations of the World Conference on Human Rights and in the work of the Centre for Human Rights.

30. The CHAIRPERSON said that it might be possible to devote some time, on Wednesday, 8 December, in the last week of the current session, to the task referred to by Mr. Simma, but that everything would depend on the progress of work.

31. The World Conference on Human Rights had encouraged the Commission on Human Rights to work in cooperation with the Committee. He viewed that statement as a straightforward invitation to the latter to continue its work, but the Committee might have to determine precisely what its role was vis-à-vis the Commission. As for the degree of attention given elsewhere to matters relating to economic, social and cultural rights, he thought it would be appropriate for the Committee to assess the situation and voice any concerns it might have.

32. Referring to the Committee's concluding observations, he said that it was noticeable that other bodies, including the Committee on the Rights of the Child and the Human Rights Committee, were adopting procedures which involved the formulation of detailed recommendations - a trend which the Committee on Economic, Social and Cultural Rights had initiated. The efficacy of the latter's work would depend to a high degree on the individual member concerned in considering a State party's report, in close collaboration with the Secretariat.

33. He suggested, for the current session, the following allocation of work: Mrs. Bonoan-Dandan - New Zealand; Mr. Wimer Zambrano - Nicaragua; Mrs. Jiménez Butragueño - Iceland; Mr. Alvarez Vita - Mexico; Mr. Muterahejuru - Senegal; and Mrs. Ider - Germany.

34. It was so agreed.

35. The CHAIRPERSON said that the names of the respective helpers from the Secretariat would be announced at the next meeting. He hoped that close personal collaboration would be established, with a view to a fruitful outcome to what was, in his view, the most important part of the Committee's work.

36. Reverting to the problem of the postponement of reports, he recalled that at a previous session, Mr. Badawi had inquired why the Committee so often agreed to defer consideration of States parties reports. The main consideration in that connection was that, since the Committee had made an effort to involve NGOs in its work, its whole procedure would be undermined if representatives of NGOs were to come to a session only to discover that the State party concerned had decided not to appear. It was also necessary for the Committee to review the situation in a State party as it currently was. The question arose as to what to do if another State party put forward the same reasons as Uruguay had done in order to request a deferral. Should the Committee agree to the deferral or state that the work was so important that it could not be deferred?

37. Mr. ALVAREZ VITA, commenting on the possibility that the expert who had drawn up the list of issues should also prepare the concluding observations, noted that in the Pre-Sessional Working Group Mrs. Jiménez Butragueño had drawn attention to the Committee's decision that there should be two experts for drafting the concluding observations on each country's report. He

recalled that in the case of Mexico he had drawn up a list of issues and presented it to the Pre-Sessional Working Group, which had subsequently added many more. Consequently, in his opinion, it would be more balanced to have two experts to prepare the concluding observations.

38. The CHAIRPERSON observed that the Committee's formal statement on the subject referred to a single expert, but there was nothing to prevent that expert from working closely with one or more colleagues. In any case the Committee needed to ensure that some specific member was responsible for supplying a draft.

39. Mrs. JIMENEZ BUTRAGUEÑO said that if the concluding observations were to be drafted by only one expert who was not from the geographical region of the State party concerned, he should have the help of another expert who was from that region and who was therefore better acquainted with the problems.

40. Mr. SIMMA requested a clarification of the procedure outlined in paragraph 8 (b) of the report of the Pre-Sessional Working Group (document M/E/C.12/1993/15), according to which the Working Group had apparently agreed that a list of questions would be asked orally of Germany, Iceland, New Zealand and Uruguay. That list would presumably be sent to the Governments concerned, whose representatives would answer the questions, and then further questions might be asked by other members of the Committee.

41. The CHAIRPERSON invited Mr. Alvarez Vita to introduce the report of the Pre-Sessional Working Group.

42. Mr. ALVAREZ VITA, Chairman/Rapporteur of the Pre-Sessional Working Group, said that the report, produced between 28 June and 2 July 1993, was an innovation and had been drawn up in order to give an idea of the Working Group's proceedings in the absence of summary records. It should be treated as an aide-mémoire.

43. The contents of paragraph 8 (b) implied no change in the Committee's procedures, which the Pre-Sessional Working Group was not legally competent to make. The additional questions formulated by the Working Group were without prejudice to the right of members of the Committee to ask further questions at the appropriate time if they so wished. In paragraph 10 the Committee was requested to ask States parties for their opinion on the preparation of an optional protocol to the Covenant, and in paragraph 11 the Committee was requested to include questions on ageing in its guidelines for the preparation of reports. The Working Group also welcomed the Secretariat's production of "country analysis" papers, which it would like to have translated into all the Committee's working languages. The Working Group had enjoyed the cooperation of WHO with regard to the right to health, dealt with in paragraphs 13-16 of the report. A text on that subject had been handed to the Secretariat for translation. Paragraph 17 related to Mrs. Jiménez Butragueño's point regarding the number of experts required for drafting concluding observations. The Working Group had also discussed handicapped persons. Paragraphs 19 and 20 called for no comment.

44. A very fruitful joint meeting had been held with the Committee on the Rights of the Child. He had the impression that the Committee on Economic, Social and Cultural Rights was acquiring prestige among the other human rights treaty bodies, due to a great extent to the work done by its Chairperson.

45. Some of the suggestions made by the Working Group would need to be discussed by the Committee.

46. Mr. SIMMA said that he was still not clear as to what was implied by paragraph 8 of the report. In future, would the Committee hear an introduction by the State party of its report, followed by a barrage of questions by members of the Pre-Sessional Working Group, plus additional questions by other members of the Committee? His idea of the work to be done by the Pre-Sessional Working Group was that it should adopt lists of issues that would be transmitted to the Governments concerned to enable them to come to the Committee's sessions well prepared to answer the questions. If the Pre-Sessional Working Group, at the same time as it adopted a written document, were to entrust one of its members to prepare a series of oral questions, a problem would arise, since all issues considered to be important by members of the Pre-Sessional Working Group should really be included in the written document.

47. With regard to paragraph 17 of the report, he had no recollection of the Committee deciding that two experts instead of one should be responsible for drafting concluding observations. Indeed, at the previous session of the Committee he himself had done such drafting work alone. Even so, it might be advisable to share responsibility among several members.

48. The CHAIRPERSON pointed out that the report introduced by Mr. Alvarez Vita, including paragraph 8 (b), contained a number of suggestions for consideration by the Committee, none of which had yet been adopted by it.

49. Mrs. JIMÉNEZ BUTRAGUEÑO recalled that she had prepared a difficult list of questions for the Islamic Republic of Iran with the very helpful support of another of the Committee's experts.

50. Mr. ALVAREZ VITA said that as he understood it, the Pre-Sessional Working Group had no authority to change the Committee's procedures. Paragraph 17 of the Pre-Sessional Working Group's report stated that the "Committee had decided that there should always be two experts responsible for drafting the concluding observations concerning a given country. Although, for professional reasons, he himself had been absent from a number of sessions, he had no reason to doubt Mrs. Jiménez Butragueño's memory. Accordingly, he would be grateful if the Chairperson could confirm whether or not the Committee had taken such a decision.

51. The CHAIRPERSON said that the situation regarding the drafting of concluding observations had been clarified in paragraph 31 of the Committee's report on its seventh session (E/C.12/1992/2) which stated that, to facilitate the drafting of the report "the Chairman requests a particular member to take initial responsibility for drafting a text which reflects the views of the Committee as a whole". However, it had been agreed that the member in question should seek and encourage additional inputs from other members,

although ultimate responsibility for drafting remained with him. If the Committee wished to depart from that practice, it would be necessary to change its rules of procedure.

52. Mr. ALVAREZ VITA said that he wished formally to propose such a change. In the interests of democracy, it would be better if the final report were drafted by two experts. In his own experience, there had been instances, for example in the case of the report of Mexico, when he would not have included many of the questions that had been incorporated into the list of issues. However, it was important that the questions did not solely reflect the concerns of one expert; according to the same logic, responsibility for drafting the concluding observations should not lie with one expert, but should be shared.

53. Mr. BADAWI regretted that he was unable to see eye to eye with Mr. Alvarez Vita. For the sake of homogeneity, it was preferable for one person to be responsible for drafting the concluding observations, although he should make every effort to seek the views of other members of the Committee.

54. The CHAIRPERSON said that it was his recollection that the decision to entrust responsibility for the concluding observations to a single member had been taken on the assumption that it would be difficult to persuade more than one person to follow in every detail the discussion of a country's report and to read all the documentation. A second consideration was the new procedure whereby the Committee's concluding observations were adopted at a closed meeting. That practice permitted an extremely frank exchange of views, at which all members of the Committee could express themselves without constraint and contribute, in a democratic debate, to the drafting of the report.

55. Mr. SIMMA said that he shared Mr. Badawi's view. Although he could understand why a large body, such as the International Law Commission, required a drafting committee, he could see no justification for such a practice in a small body such as the Committee on Economic, Social and Cultural Rights. He pointed out, moreover, that as the member responsible for drafting the concluding observations was assisted by a member of the Secretariat, the burden would in fact be shared. Furthermore, the concluding observations were adopted by the Committee as a whole in a closed meeting; there was thus every opportunity to ensure that democratic principles were respected. If the Committee decided to make two members responsible for drafting concluding observations, its work would probably be hampered.

56. Mr. ALVAREZ VITA said that he did not wish to be responsible for engaging the Committee in a lengthy procedural debate. He proposed that the Committee should decide formally to appoint a "friend of the expert" in line with the practice of other bodies that appointed "friends of the rapporteur". He thought that the Committee should take a formal decision to do so, in order to avoid the confusion that would arise if the practice were merely informal.

57. The CHAIRPERSON said that the issue before the Committee was whether it wished to formalize the proposal to appoint a friend of the expert. An alternative solution would be to adopt a provision allowing the individual expert to seek the assistance of other members of the Committee in carrying out his responsibilities.

58. Mr. ALVAREZ VITA said that, in his view, the appointment of a friend of the expert would serve a clearer practical purpose than a mere informal decision to allow him to decide whether or not to seek contributions from other members; it should be mandatory for him to do so, and not merely an invitation. A further consideration was that there might well be specific cases in which the expert might not wish, for political or other reasons, to be solely responsible for the concluding observations on a particular country's report.

59. Mrs. JIMÉNEZ BUTRAGUEÑO pointed out that the idea of appointing two experts, referred to in paragraph 17 of the report of the Pre-Sessional Working Group, actually predated the practice of providing the expert with extremely valuable assistance from the Secretariat, a practice which had possibly made the suggestion redundant. Her own preference was that one expert should be responsible for drafting the concluding observations, but that he should seek assistance from another member of the Committee with an intimate knowledge of the region in which the country under consideration was located. However, she did not think that it was necessary to put the issue to a formal vote.

60. Mr. ALVAREZ VITA said that in the light of the reassurances given by Mrs. Jiménez Butragueño, he was prepared to withdraw his proposal.

61. The CHAIRPERSON said that in response to a letter from the Government of Canada, the Committee had to decide at what point its concluding observations became public. In the past, other Committees had followed a somewhat roundabout practice whereby concluding observations had not been made public until a few days after they had been sent to the respective mission. However, since there was no provision for missions to give their views on concluding observations, it was hard to justify that approach. It had subsequently become the Committee's practice, as well as that of the Committee on the Rights of the Child and the Human Rights Committee, to make concluding observations public once they had been adopted at a public meeting. It was difficult to imagine any other practice, as it was hardly possible to ensure the confidentiality of a document that had been adopted at a public meeting. However, the Committee had to decide whether it wished to confirm that practice.

62. It was so decided.

63. The CHAIRPERSON said that he would ensure that States were informed of the Committee's decision.

The meeting rose at 12.40 p.m.